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February 15, 2011

Marlene Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

**Re: *In the Matter of Implementation of Section 224 of the Act; A National Broadband Plan for Our Future*, WC Docket No. 07-245; GN Docket No. 09-51**

Dear Ms. Dortch:

Pursuant to 47 C.F.R. Section 1.1206, we hereby submit a notification of an *ex parte* communication in the above-referenced proceeding.

On February 14, 2011, Terri Natoli and Robert Shugarman of Time Warner Cable ("TWC"), Donald Hooper of Electric Supply and Communication Consulting Services, Inc., and the undersigned met with Christi Shewman, Associate Chief of the Wireline Competition Bureau ("WCB"), William Dever, Chief of the Competition Policy Division of the WCB, Jeremy Miller, Deputy Division Chief of the Industry Analysis and Technology Division of the WCB, Jennifer Prime, Acting Legal Advisor of the WCB, and Wesley Platt and Claude Aiken also of the WCB.

TWC has filed extensive comments and reply comments during the course of this proceeding, and our discussion focused on some aspects of those comments. Specifically, we discussed that, like pole owners, TWC is committed to constructing and maintaining safe outside plant to protect its employees, the general public, and ensuring the continuity of its services. Toward that end, we discussed that the National Electrical Safety Code ("NESC" or "Code") establishes standards based on industry-wide consensus that are sufficient to ensure safe conditions. Among other things, the NESC governs the correction of conditions that are out of compliance with its standards. While Code violations that "could reasonably be expected to endanger life or property shall be promptly repaired," non-life-threatening violations are to be recorded and corrected in the normal course. NESC Rule 214. Indeed, even where there is an existing violation on a pole, facilities may still be added, replaced, or rearranged, so long as the activity would not create a new violation or exacerbate an existing one. See NESC IR 548 (March 2009). This is significant in the context of overloading, for example, where adding additional fiber to an existing attachment would not create a new or exacerbate an existing violation.

The NESC also establishes practical Work Rules to be followed for the installation, operation, and maintenance of electric supply and communications facilities in order to safeguard employees and the general public from injury. See NESC Rules 400-447. In this regard, the NESC contains specific rules for communications workers to follow, including safe approach distances to energized

facilities. See NESC Rules 430-434. Under the Work Rules, communications workers can safely work even on poles that contain Code violations, so long as they are able to keep below the lowest horizontal conductor and not touch (or stay one-foot away, where the facility carries more than 300V, from) any energized facilities.

In light of the requirements of the NESC, the Commission need not (and should not) adopt rules to address the safety concerns raised by utility commenters in this proceeding, other than to recognize that the NESC sets safety standards for all parties to follow. While utility pole owners may seek to impose requirements above those established by the NESC, any such requirements are not for legitimate safety reasons and vesting pole owners with broad discretion to restrict access to poles based on standards and policies that exceed NESC requirements will impede broadband deployment without resulting "safety" benefits. To the extent that utilities desire to impose purported "safety" standards in excess of those required by the NESC, these additional standards should be presumed to be unnecessary, unjust and unreasonable under Section 224 of the Communications Act. See 47 U.S.C. § 224. Of course, to the extent that a few states have adopted standards in excess of the NESC for other legitimate reasons, TWC agrees those standards should be followed as well.

Consistent with our filed comments, we also discussed allegations made by utilities in this proceeding that cable operators place time-to-market considerations above safety or concerns for network integrity. (See TWC Reply Comments, Oct. 4, 2010, at 36-39; TWC Reply Comments, Apr. 22, 2008, at 38-47; TWC Comments, Mar. 7, 2008, at 53-58.) The reality is that no parties on the pole want to create safety violations, but they occur for a variety of reasons, including natural factors such as weather and normal wear and tear. Moreover, utilities have incentives to – and frequently do – blame cable operators, including TWC, for pole conditions that the utilities themselves created.

Finally, we discussed the Commission's proposal to adopt permitting and make-ready timelines. Consistent with our comments, we explained that TWC generally gains access to poles in a far shorter amount of time than the Commission proposes, which is necessary for it to meet contractual commitments to customers and maintain competitive service timeframes that meet customers' needs and expectations. (TWC Reply Comments, Oct. 4, 2010, at 12-21; TWC Comments, Aug. 16, 2010, at 15-23.) If the Commission chooses to adopt permitting and make-ready schedules in an effort to clear barriers to timely broadband deployment, it should therefore adopt timelines that encourage greater efficiency rather than simply address outlier cases of extravagant delays.

We have attached materials distributed during the presentation.

If there are questions regarding the foregoing or the attached, please contact the undersigned.

Best wishes,



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## Enclosures

cc: William Dever  
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